

REMARKS

In response to the Final Office Action dated May 18, 2005, claims 1 and 51-54 are currently under consideration. Reconsideration of the present application is respectfully requested in view of the following remarks.

Applicants thank the Examiner for withdrawal of the previous rejections.

Oath or Declaration

The Action alleges that the oath or declaration is defective in that it claims priority to applications to which priority is no longer claimed.

Applicants respectfully traverse the objection and submit that nowhere in the 37 CFR 1.67(a) or in MPEP 602.01 or 602.02 is it required that Applicants remove in the oath or declaration reference to applications to which priority is no longer claimed. All that is required is that an oath or declaration identify the application by application number and filing date, which the Declaration as filed in this application does.

Notwithstanding the above remarks, solely to further prosecution of the application, Applicants enclose herewith a new Declaration signed by Drs. Martin Cheever and Alexander Gaiger. Note that Applicants are concurrently filing a request to correct inventorship reflecting the inventors of the elected subject matter. The inventors of the elected subject matter are Alexander Gaiger and Martin Cheever.

Information Disclosure Statement

The Action alleges that now that the present application no longer claims priority to the prior applications, copies of the references cited in the IDS filed June 18, 2001, which were not previously provided, are now required.

Enclosed herewith is a copy of the original form 1449 as filed on June 14, 2001, as well as copies of the cited references as requested. Applicants note that all references cited in this IDS were previously considered by the Examiner as evidenced by the signed 1449 form included with the Office Action dated May 18, 2004.

Rejections under 35 U.S.C. § 103(a)

Claims 1 and 51-54 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Gaiger *et al.* (2000) in view of Xu *et al.* (US Patent 6,818,751). In particular, the Action alleges that Gaiger *et al.* discloses a his tag fusion protein containing the WT1 N terminal protein sequence as recited in claim 1. While the his tag differs from that disclosed in Gaiger *et al.*, the Action contends that it would have been obvious to the skilled artisan to use the his tag taught in Xu *et al.*

As an initial matter, the Action provides no citation for the Gaiger *et al.* reference beyond the first author and publication year (2000). Applicants assume that the Action is referring to the Gaiger *et al.*, Blood 96(4):1480-1489, August 15, 2000, reference cited in Applicants' IDS filed June 14, 2001 (see reference CK). Please advise if this is not correct.

Without acquiescing to the rejection, Applicants submit herewith a Declaration under 37 C.F.R. 1.132 which evidences that those authors of Gaiger *et al.* not named as inventors did not make an inventive contribution to the instant invention. Since the work set forth in the Gaiger, *et al.* reference does not represent the work of another, the teachings of this reference, either alone or in combination, cannot serve in the context of a §102(a) or a §102(a)/103(a) rejection of the instantly claimed subject matter (see *In re Katz*, 687 F.2nd 450, 215 USPQ 14). Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 103(a) as unpatentable over Gaiger *et al.* (2000) in view of Xu *et al.*

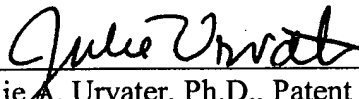
In view of the above remarks, the claims are now believed to be in condition for allowance. A good faith effort has been made to place the application in condition for allowance. However, should any further issue require attention prior to allowance, the Examiner is requested to contact the undersigned at 206-622-4900 to resolve same.

Application No. 09/785,019
Reply to Office Action dated May 18, 2005

The Director is authorized to charge any additional fees due by way of this Response, or credit any overpayment, to our Deposit Account No. 19-1090.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC



Julie A. Urvater, Ph.D., Patent Agent
Registration No. 50,461

JAU:mcs

Enclosures:

Postcard
37 CFR 1.63 Declaration (2)
Request to Correct Inventorship
Copy of June 14, 2001 Form PTO-1449 and cited references (111)
37 CFR 1.132 Declaration (2)

701 Fifth Avenue, Suite 6300
Seattle, Washington 98104-7092
Phone: (206) 622-4900
Fax: (206) 682-6031

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